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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/765,963	<b>Applicant(s)</b> SHIOTA ET AL.	
	<b>Examiner</b> David P. Rashid	<b>Art Unit</b> 2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-2, 5, 9, 11-16, and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2, 5, 9, 11-16, and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 November 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/23/2007</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

All of the examiner's suggestions presented herein below have been assumed for examination purposes, unless otherwise noted.

### *Amendments*

1. This office action is responsive to the claim and specification amendment received on November 29, 2007. Claims 1-2, 5, 9, 11-16, and 18 are pending; claims 3-4, 6-8, 10, and 17 cancelled.

### *Drawings*

2. The replacement drawings were received on November 29, 2007 are acceptable. In response to applicant's drawing amendments and remarks, the previous drawing objections are withdrawn.

### *Claim Rejections - 35 USC § 101*

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Section IV.C, reads as follows:

While abstract ideas, natural phenomena, and laws of nature are not eligible for patenting, methods and products employing abstract ideas, natural phenomena, and laws of nature to perform a real-world function may well be. In evaluating whether a claim meets the requirements of section 101, the claim must be considered as a whole to determine whether it is for a particular application of an abstract idea, natural phenomenon, or law of nature, rather than for the abstract idea, natural phenomenon, or law of nature itself.

For claims including such excluded subject matter to be eligible, the claim must be for a practical application of the abstract idea, law of nature, or natural phenomenon. Diehr, 450 U.S. at 187, 209 USPQ at 8 ("application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection."); Benson, 409 U.S. at 71, 175 USPQ at 676 (rejecting formula claim because it "has no substantial practical application").

To satisfy section 101 requirements, the claim must be for a practical application of the Sec. 101 judicial exception, which can be identified in various ways:

The claimed invention "transforms" an article or physical object to a different state or thing.

The claimed invention otherwise produces a useful, concrete and tangible result, based on the factors discussed below.

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5. Claims 1-2, 5, 9, 11-14, and 18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claims 1-2, 5, 9, 11-14, and 18 recite the mere manipulation of data or an abstract idea, or merely solves a mathematical problem without a limitation to a practical application. A practical application exists if the result of the claimed invention is “useful, concrete and tangible” (with the emphasis on “result”)(Guidelines, section IV.C.2.b). A “useful” result is one that satisfies the utility requirement of section 101, a “concrete” result is one that is “repeatable” or “predictable”, and a “tangible” result is one that is “real”, or “real-world”, as opposed to “abstract” (Guidelines, section IV.C.2.b)). Claims 1-2, 5, 9, 11-14, and 18 merely manipulates data without ever producing a useful, concrete and tangible result.

Claims 1-2, 5, 9, 11-14, and 18 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter because the claimed invention is directed to a judicial exception and is not directed to a practical applicant of such judicial exception (though the claims produce what is considered a useful and concrete result, the claims do not require any physical transformation and the invention does not produce a tangible result because there is no physical element).

MPEP SECTION 2106 (IV)(C)(2)(b)(2) titled “TANGIBLE RESULT” reads as follows:

...the tangible requirement does require that the claim must recite more than a 35 U.S.C. 101 judicial exception, in that the process claim must set forth a practical application of that judicial exception to produce a real-world result. Benson, 409 U.S. at 71-72, 175 USPQ at 676-77 (invention ineligible because had “no substantial practical application.”).

and MPEP SECTION 2106 (II)(C) reads as follows:

As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:

- (A) statements of intended use or field of use,
- (B) “adapted to” or “adapted for” clauses,
- (C) “wherein” clauses, or
- (D) “whereby” clauses.

For example, the method of independent claim 1 is directed to the actions of “classifying”, “extracting”, “differentiating”, “equipped”, and “sets” which does not reside on any physical element (e.g. display, processor, memory) and is free from any “real-world result” as there may be no “real-world” application.

However, claim 11, l. 3 cites “wherein only the qualified photographic images are printed” suggesting that the apparatus prints only qualified photographic images (thus inducing physicality), but the printing itself is not positively recited (and so the printing remains non-physical). It is suggested to reword such as (or its equivalent) “wherein: the differentiating and processing means is a printer; and only the qualified photographic images are printed thereby” (assuming the original disclosure supports the differentiating and processing means supports a printer).

In order to for the claimed product to produce a “useful, concrete and tangible” result, recitation of one or more of the following elements is suggested:

- The manipulation of data that represents a physical object or activity transformed from outside the computer.
- A physical transformations outside the computer, for example in the form of pre or post computer processing activity.
- A direct recitation of a practical application;

Applicant is also advised to provide a written explanation of how and why the claimed invention (either as currently recited or as amended) produces a useful, concrete and tangible result.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1-2, 13-15, and 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kowald (US 2003/0002715 A1) in view of Khan et al. (US 2003/0126121 A1).

8. Regarding **claim 1**, while Kowald discloses a photographic image (“photographer...capturing the image or image sequence.” in para. 0037) selecting apparatus (fig. 5) comprising:

a classifying means (fig. 5, elements 522, 524; fig. 6, element 601) for classifying a plurality of photographic images into similar photographic image groups (“[t]he visual language classification system 522 outputs classification data 524, configured as further metadata, which is associated with each image...” in para. 0036; “features including landscape features...or other particular shapes...” in para. 0037; “time code and date data” in para. 0051), comprising photographic images which are similar to each other (photographic images in a video stream are “similar” to each other), the similarities being determined by analyzing (“content analysis to analyse the images residing in the store 510.”, in para. 0037) digital data (“digital video” in para. 0035) representing the photographic images;

a qualified photographic image extracting means (fig. 5, element 514; fig. 6, element 616) for extracting (“editing system 514 which extracts the appropriate images or sequence of images from the store 510.” in para. 0047; para. 0048 for an example of “images that have been previously classified as a long shot.”) photographic images, that satisfy predetermined selection conditions (para. 0050; “sharpness, colour, content quality” in para. 0053) as qualified photographic images (those images classified under a certain characteristic in memory 526 will be identified for editing in video editing system 514), from each of the similar photographic image groups (Each frame/image is tagged with metadata including all identified characteristics of that particular frame. All frames/images with a

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particular metadata tag (e.g. exposure amount) is a group, and it is possible for each frame/image to belong to multiple groups. Hence, each of the similar photographic image groups will be extracted in the editing system 514 when all images are searched for a particular metadata characteristic.); and

a differentiating and processing means (fig. 5, elements 518, 519, 516; fig. 6, element 616) for differentiating the qualified photographic images from the other photographic images (those images classified under a certain characteristic in memory 526 will be identified for editing in video editing system 514 is “differentiating” those images classified under a certain characteristic from the rest) and administering processes thereon (those images classified under a certain characteristic are then open for editing in system 514, and thus “administering processes thereon”),

wherein:

the qualified photographic image extracting means (fig. 5, element 514; fig. 6, element 616) is equipped with a selection condition setting means (fig. 5, element 514; “[t]he system 514 then interrogates the store 526 to form a pick-list of images...” in para. 0048; para. 0048), and

the selection condition setting means sets the selection conditions for each similar photographic image group (fig. 5, element 514 is responsible for selecting the set for each similar photographic image group; para. 0048), Kowald does not teach the selection condition setting means so as to be stricter for photographic image groups having a greater number of photographic images included therein.

Khan discloses a method for remotely searching biometric data (including face recognition) that includes a selection condition setting means (FIG. 10) that sets the selection conditions for each similar photographic image group (“photographs of a group of individuals of interest” in para. 0023), so as to be stricter for similar image photographic image groups having a greater number of photographic images included therein (“[a]lternatively, the search engine may be programmed by the

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user to select a predetermined number of top matches and send those to the workstation (1026” in para. 0052; if a predetermined number of top matches is selected (*e.g.*, 10), then the more images in a given group would have to have stricter rules because only 10 must be selected (*i.e.*, selecting 10 images from a group of 100 images would not incorporate as many strict rules needed for selecting 10 images from a group of 1000 images).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for the selection condition setting means of Kowald to include so as to be stricter for photographic image groups having a greater number of photographic images included therein as taught by Khan “to provide a system and method for searching biometric data over a network”, Khan, para. 0009 and “to provide a system and method that uses the Internet as a communication infrastructure to enable time and cost-effective information sharing of biometric information between organizations”, Khan, para. 0010.

9. Regarding **claim 2**, Kowald discloses wherein:

the predetermined selection conditions include image quality levels (“image quality analysis” in paragraph [0053]).

10. Regarding **claim 13**, Kowald discloses wherein:

the differentiating and processing means (FIG. 5, elements 518, 519, 516; FIG. 6, element 616) performs processes wherein the qualified photographic images and the other photographic images are differentiated (paragraph [0047]), then recorded in a recording medium (FIG. 5, element 519; paragraph [0036]).

11. Regarding **claim 14**, Kowald discloses wherein:

the differentiating and processing means (FIG. 5, elements 518, 519, 516; FIG. 6, element 616) performs processes wherein only the qualified photographic images are recorded (from



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paragraph [0036], the video editing system 514 grabs only the frames/images from database 510 that pertain to metadata characteristics stored in database 526 to be further processed in elements 516, 518, 519) in a recording medium (FIG. 5, element 519; paragraph [0036]).

12. Regarding **claim 15**, Kowald discloses wherein:

the differentiating and processing means (FIG. 5, elements 518, 519, 516; FIG. 6, element 616) is a display means (FIG. 5, element 518); and

only the qualified photographic images are displayed (from paragraph [0036], the video editing system 514 grabs only the frames/images from database 510 that pertain to metadata characteristics stored in database 526 to be further processed in elements 516, 518, 519) thereby.

13. Regarding **claim 18**, claim 1 recites identical features as in the computer readable medium having recorded therein a program that causes a computer to execute selection of photographic images (FIG. 6; paragraph [0062]) of claim 18. Thus, references/arguments equivalent to those presented above for claim 1 are equally applicable to claim 18.

14. **Claims 5 and 9** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kowald (US 2003/0002715 A1) in view of Khan et al. (US 2003/0126121 A1) and Bhatt (US 2002/0118883 A1).

15. Regarding **claim 5**, while Kowald in view of Khan discloses a photographic image selecting apparatus as defined in claim 3, Kowald in view of Khan does not teach wherein the selection condition setting means sets the selection conditions so that at least one qualified photographic image is extracted from each of the similar photographic image groups.

Bhatt discloses a classifier-based enhancement of digital image (FIG. 5) wherein a selection condition setting means sets the selection conditions (FIG. 5, elements 40, 45, 50, 65, 55) so that at least one qualified photographic image (paragraph [0032]; FIG. 5, element 20, "photo quality" in paragraph [0008]) is extracted ("Each image after enhancement goes through a file size check in

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element 45.” in paragraph [0032]; paragraph [0032]) from each of the similar photographic image groups (“Image Enhance GROUP 1” through “Image Enhance GROUP N” in FIG. 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for the selection condition setting means of Kowald in view of Khan to include setting the selection conditions so that at least one qualified photographic image is extracted from each of the similar photographic image groups as taught by Bhatt “...to provide a novel automated method with minimal manual interactions to enhance the images from diverse sources.”, Bhatt, paragraph [0009].

16. Regarding **claim 9**, while Kowald in view of Khan discloses a photographic image selecting apparatus as defined in claim 3, Kowald in view of Khan does not disclose wherein the selection condition setting means sets the selection conditions according to a specified number of qualified photographic images to be extracted from each of the similar photographic image groups.

Bhatt discloses a classifier-based enhancement of digital image (FIG. 5) wherein a selection condition setting means (FIG. 5, elements 40, 45, 50, 65, 55) sets the selection conditions (FIG. 5, element 65; “parameters” in paragraph [0032]; paragraph [0032]) according to a specified number (the specified number is all images in each Image Enhance GROUP, whatever that number may be) of qualified photographic images (paragraph [0032]; FIG. 5, element 20, “photo quality” in paragraph [0008]) to be extracted from each of the similar photographic image groups (“Image Enhance GROUP 1” through “Image Enhance GROUP N” in FIG. 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for the selection condition setting means of Kowald in view of Khan to include setting the selection conditions according to a specified number of qualified photographic images to be extracted from each of the similar photographic image groups as taught by Bhatt “...to provide a novel

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automated method with minimal manual interactions to enhance the images from diverse sources.”, Bhatt, paragraph [0009].

17. **Claim 11** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kowald (US 2003/0002715 A1) in view of Khan et al. (US 2003/0126121 A1) and Kowald (US 2003/0002715 A1).

18. Regarding **claim 11**, while Kowald in view of Khan discloses a photographic image selecting apparatus as defined in claim 1, wherein Kowald discloses:

the differentiating and processing means (FIG. 5, elements 518, 519, 516; FIG. 6, element 616) performs processes wherein only the qualified photographic images (from paragraph [0036], the video editing system 514 grabs only the frames/images from database 510 that pertain to metadata characteristics stored in database 526 to be further processed in elements 516, 518, 519) are processed (FIG. 5, elements 518, 519), Kowald in view of Khan does not teach wherein that processing is printing.

Kowald teaches a printer (FIG. 6, element 615) connected to the photographic image selecting apparatus (FIG. 6, element 601).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for the differentiating and processing means of Kowald in view of Khan to include a printer as taught by Kowald for “...the automated classification of images and/or shots into various emotive categories thereby permitting editing to achieve a desired emotive effect.”, Kowald, paragraph [0016].

19. **Claim 12** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kowald (US 2003/0002715 A1) in view of Khan et al. (US 2003/0126121 A1) and Kowald (US 2003/0002715 A1) and Sano (US 6,079,885 A).

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20. Regarding **claim 12**, while Kowald in view of Khan discloses a photographic image selecting apparatus as defined in claim 1, wherein Kowald discloses:

the differentiating and processing means performs process wherein the qualified photographic images and the other photographic images are processed (If two metadata characteristics are extracted from video editing system 514, groups A and B are formed – slides with characteristics of one metadata (group A) and slides with characteristics of the other metadata (group B). All slides with both metadata characteristics are processed (groups A and B), and if group A is the “qualified photographic images” with respect to one metadata characteristic, then group B would be the “other photographic images”). Kowald does not teach wherein the process is (i) printing (ii) in different sizes.

Kowald teaches a printer (FIG. 6, element 615) connected to the photographic image selecting apparatus (FIG. 6, element 601).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for the differentiating and processing means of Kowald in view of Khan to include a printer for printing as taught by Kowald for “...the automated classification of images and/or shots into various emotive categories thereby permitting editing to achieve a desired emotive effect.”, Kowald, paragraph [0016].

Sano discloses a printer with variable image processing corresponding to image size (FIG. 1) wherein photographic images (Col. 3, lines 28 - 29) are printed in different sizes (“image 1” and “image 2” in FIG. 6).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for the differentiating and processing means and printer of Kowald in view of Khan and Kowald to include printing the qualified photographic images and the other photographic images of Kowald in

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view of Khan and Kowald in different sizes as taught by Sano "...to produce high quality prints by changing the type of image processing and the amount of correction corresponding to the size of each printed image.", Sano, Col. 2, lines 3 – 5.

21. **Claim 16** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kowald (US 2003/0002715 A1) in view of Khan et al. (US 2003/0126121 A1) and Tsukagoshi et al. (US 5,848,217 A).

22. Regarding **claim 16**, while Kowald in view of Khan discloses a photographic image selecting apparatus as defined in claim 1, wherein Kowald discloses:

the differentiating and processing means (FIG. 5, elements 518, 519, 516; FIG. 6, element 616) is a slideshow display means (FIG. 5, element 518 wherein a display constitutes a "slideshow"); and

the qualified photographic images and the other photographic images (If two metadata characteristics are extracted from video editing system 514, groups A and B are formed – slides with characteristics of one metadata (group A) and slides with characteristics of the other metadata (group B). All slides with both metadata characteristics are displayed (groups A and B), and if group A is the "qualified photographic images" with respect to one metadata characteristic, then group B would be the "other photographic images".) are displayed as slides for display durations, Kowald in view of Khan does not teach displaying different durations.

Tsukagoshi discloses subtitle encoding/decoding method and apparatus (FIG. 1) wherein slides ("plurality of video frames" in Col. 6, lines 23 - 39) are displayed in different durations (Col. 6, lines 23 – 39 wherein subtitles are longer in time duration than the video frame).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for slideshow display means of Kowald in view of Khan to display the slides at different display

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durations as taught by Tsukagoshi “for encoding subtitles to be played back exclusively during the trick playback mode, i.e., during fast, slow or reverse playback modes.”, Tsukagoshi, Col. 2, lines 61 – 64.

### *Response to Arguments*

23. Applicant’s arguments filed on November 29, 2007 with respect to claims 1, 9, 13, and 16 have been respectfully and fully considered, but they are not found persuasive.

24. Summary of Remarks regarding claim 1:

Applicant argues Florance et al. merely discloses that a user can modify the search request to narrow the scope of search results when the search results contain too many documents. However, these teachings are insufficient to teach or suggest a selection condition setting means setting the selection conditions for each similar photographic image group, so as to be stricter for similar photographic image groups having a greater number of photographic images included therein. (Applicant’s Resp. 8, Nov. 29, 2007.)

As such, Applicants respectfully submit that Florance et al. fails to cure the deficiencies of the teachings of Kowald. Thus, the Examiner has failed to establish *prima facie* obviousness by failing to provide references that teach or suggest all of the claim elements. It is respectfully requested that the outstanding rejection be withdrawn. (Resp. 8.)

25. Examiner’s Response regarding claim 1:

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground of rejection of Kowald in view of Khan. The Examiner acknowledges that though Kowald does disclose wherein the qualified photographic extracting means is equipped with a selection condition setting means (fig. 5, element 514; “[t]he system 514 then interrogates the store 526 to form a pick-list of images...” in para. 0048; para. 0048), and the selection condition setting

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means sets the selection conditions for each similar photographic image group (fig. 5, element 514 is responsible for selecting the set for each similar photographic image group; para. 0048) not directly disclose, teach, or suggest the newly added limitation of the being stricter for similar photographic image groups having a greater number of photographic images included therein. However, the Examiner asserts that this limitation is equivalent to an embodiment of which would include setting a fixed number of searched matches independent of the number of items being searched. It is obvious to one of ordinary skill in the art at the time the invention was made that if the number of searched matches was fixed (e.g., allowing only 10 searched matches, them having to be the "best" matches), then there would have to exist rules such that they would have to become "stricter" when the number of items being searched increases (e.g., rules needed to find the 10 best matches out of 10,000 items is "stricter" than rules needed to find the 10 best matches out of 100 items; also considering the "strictness" needed to find the 10 best matches out of 10 items would be "no strictness").

Khan discloses a method for remotely searching biometric data (including face recognition) that includes a selection condition setting means (FIG. 10) that sets the selection conditions for each similar photographic image group ("photographs of a group of individuals of interest" in para. 0023), so as to be stricter for similar image photographic image groups having a greater number of photographic images included therein ("[a]lternatively, the search engine may be programmed by the user to select a predetermined number of top matches and send those to the workstation (1026" in para. 0052; if a predetermined number of top matches is selected (e.g., 10), then the more images in a given group would have to have stricter rules because only 10 must be selected (i.e., selecting 10 images from a group of 100 images would not incorporate as many strict rules needed for selecting 10 images from a group of 1000 images).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for the selection condition setting means of Kowald to include so as to be stricter for photographic image groups having a greater number of photographic images included therein as taught by Khan “to provide a system and method for searching biometric data over a network”, Khan, para. 0009 and “to provide a system and method that uses the Internet as a communication infrastructure to enable time and cost-effective information sharing of biometric information between organizations”, Khan, para. 0010.

26. Summary of Remarks regarding claim 9:

Applicant argues the disclosure of Bhatt is directed to a classifier-based enhancement of digital images. In paragraph [0032] Bhatt merely discloses that element 65 tunes the image parameters according to the file size. However, these teachings are insufficient to teach or suggest setting the selection conditions according to a number of images. As such, Applicants respectfully submit that Bhatt fails to cure the deficiencies of the teachings of Kowald and thus claim 9 is patentable over the references as cited. It is respectfully requested that the outstanding rejection be withdrawn. (Resp. 9.)

27. Examiner’s Response regarding claim 9:

However, Bhatt discloses a classifier-based enhancement of digital image (FIG. 5) wherein a selection condition setting means sets the selection conditions (FIG. 5, elements 40, 45, 50, 65, 55) so that at least one qualified photographic image (paragraph [0032]; FIG. 5, element 20, “photo quality” in paragraph [0008]) is extracted (“Each image after enhancement goes through a file size check in element 45.” in paragraph [0032]; paragraph [0032]) from each of the similar photographic image groups (“Image Enhance GROUP 1” through “Image Enhance GROUP N” in FIG. 5). The selection conditions are those elements of 40, 45, 50, 65, 55 in FIG. 5 that are not restricted to element 65 as



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argued by the Applicant. The Examiner respectfully requests the Applicant to find how the invention differs from that of Bhatt in regard to claim 9.

28. Summary of Remarks regarding claim 13:

Applicant argues Kowald merely discloses element 519 storing the images extracted by the editing system 514. However, these teachings are insufficient to teach or suggest setting the qualified photographic images and the other photographic images are differentiated and then recorded in a recording medium. As such, Applicants respectfully submit that Kowald fails to teach or suggest all of the elements recited in claim 13 and thus claim 13 is not anticipated by Kowald. It is respectfully requested that the outstanding rejection be withdrawn. (Resp. 10.)

29. Examiner's Response regarding claim 13:

However, Kowald discloses wherein: the differentiating and processing means (FIG. 5, elements 518, 519, 516; FIG. 6, element 616) performs processes wherein the qualified photographic images and the other photographic images are differentiated (paragraph [0047]), then recorded in a recording medium (FIG. 5, element 519; paragraph [0036]). The Examiner respectfully requests the Applicant to find how the invention differs from that of Bhatt in regard to claim 13.

30. Summary of Remarks regarding claim 16:

Applicant argues the Examiner relies on element 518 to teach both the classification means and the differentiating and processing means recited in claim 16 and claim 1. Applicant respectfully submits that this reference of the single element to teach the two recited means is improper. It is respectfully requested that the outstanding rejection be withdrawn. (Resp. 10.)

31. Examiner's Response regarding claim 16:

However, the Examiner disagrees as it is possible a single element (that is capable of multiple functions) can teach multiple recited means (e.g., though a "computer" is considered a single element,

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a computer is a vast conglomeration of multiple functions and thus multiple means such as "computing", "powering on", "storing", "sending", "receiving", etc). Element 518 is nothing more than a "display unit" that Kowald discloses as having multiple functions, and thus having multiple means. An element, it being just one, does not imply that it is only capable of one mean/function. If that were true, every function/mean would have to be considered and each have a separate name which is impractical.

### *Conclusion*

32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: US 6498861 B1; US 20030002720 A1; US 20030009469 A1; US 20030044062 A1; US 20030078897 A1

33. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

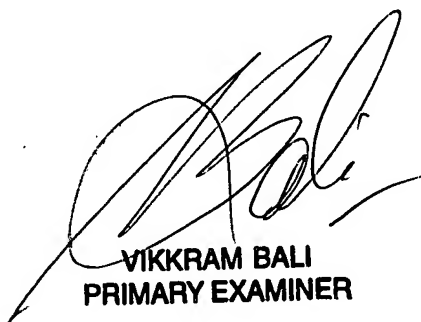
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to David P. Rashid whose telephone number is (571) 270-1578. The examiner can normally be reached Monday - Friday 8:30 - 17:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vikkram Bali can be reached on (571) 272-7415. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**VIKKRAM BALI**  
**PRIMARY EXAMINER**

/David P. Rashid/  
Examiner, Art Unit 2624

David P Rashid  
Examiner  
Art Unit 2624